IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5091 OF 2004

The Greater Bombay Co-op.
Bank Limited ... Petitioner

versus

M/s. Snowcem India Ltd.
and others ... Respondents

...

Mr. Virendra Tulzapurkar, with Mr. Amit Jamsande i/by Shaunak Satpute & Co., for the Petitioner.

Mr. Arif Bookwala with Mr. M.H. Rawal, for Respondents Nos. 1 and 2.

Mr. R.V. Govilkar, for Respondent No. 3.

...

CORAM : A.M.KHANWILKAR,J.

29th June 2004

P.C.:

. Heard Counsel appearing for the parties. Rule. Rule made returnable forthwith by consent. Mr. Rawal waives notice for Respondents Nos. 1 and 2 and Mr. Govilkar waives notice for Respondent No. 3.

. As short question is involved, petition is taken up for final disposal forthwith by consent.

. Mr. Govilkar has raised a technical objection regarding maintainability of this petition. It is contended that the petition is presented under Article 226 of the Constitution of India and upon reading the prayer clause of the petition, the same will at best be maintainable before the Division Bench and Single Judge will have no jurisdiction to finally dispose of the same. In response to the said preliminary objection, Counsel for the Petitioner fairly states that the Petitioner will carry out the necessary amendment in order to bring the petition and the prayer clauses within the parameters of Article 227 of the Constitution of India, because the Petitioner is essentially questioning the correctness of the order passed by the Maharashtra State Co-operative Court, Mumbai dated March 31, 2004 in Miscellaneous Application No. 46 of 2004 in Appeal No. 14 of 2004. In view of the submission made on behalf of the Petitioner, I find no reason to non-suit

the Petitioner on the technical objection raised by Mr. Govilkar. Instead, in the interest of justice, the Petitioner is permitted to carry out the amendment to the petition, which the Counsel for the Petitioner has assured, will be done in the course of the day. Ordered accordingly. In view of the above, matter is proceeded on merits.

. The order which is impugned in this petition was passed on the application filed by Respondent No. 3 in the pending appeal preferred by Respondent No.1 before the Co-operative Appellate Court, Mumbai. The dispute is pending between the Petitioner and Respondents Nos. 1 and 2. In the said pending dispute, Respondent No. 3 filed application for intervention which application was rejected by order dated 13th July 2004. It is not in dispute that the said order is not challenged by Respondent No.3, whereas it was questioned by Respondent No. 1 before the Co-operative Appellate Court, Mumbai, being Appeal No. 14 of 2004. Whether such an appeal is maintainable or not is not an issue before me. What is relevant to note is that while the said appeal was pending, Respondent No. 3 filed an application with a specific prayer that he may be

added as party Respondent to the said appeal. While considering that application, the Co-operative Appellate Court by the impugned judgment and order dated 31st March 2004 has not only allowed the said application, but also ordered that the Respondent No. 3 be added as opponent in the trial Court. Such an order virtually decides the main controversy pending in the appeal preferred by Respondent No. 1 against the order passed by the trial Court of rejection of application preferred by Respondent No. 3 dated January 13, 2004. Such a course cannot be countenanced. The order, which is challenged in this petition, therefore, cannot be sustained in law. The Appellate Court has committed manifest error in allowing the application, that too to the extent of directing impleadment of Respondent No. 3 as opponent in the trial Court. That question will have to be examined in the pending appeal No. 14 of 2004. Accordingly, the impugned order is modified to the extent that Respondent No. 3 be added as party Respondent in the pending appeal before the appellate Court. This order, however, will not create any right in favour of Respondent No. 3 to contend that she should be added as party Respondent No. 3 in the

pending dispute because that issue will have to be decided in the pending appeal. Besides, the appellate Court will be free to examine the question of locus of Respondent No. 1 to maintain appeal in respect of order which was passed against Respondent No. 3 by the trial Court. All such questions are left open to be decided on its own merits in accordance with law. Appeal be decided as expeditiously as possible, preferably within four weeks from today.

. Rule made absolute accordingly with no order as to costs.

. All concerned to act on the copy of this order duly authenticated by the Court Stenographer of this Court.

(A.M.KHANWILKAR,J.)

IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5291 OF 2004

Ramesh Vishnupant Khandwe
and another ... Petitioners

versus

The Additional District
Collector, Pune ... Respondent

...

Mr. A.V. Anturkar, for the Petitioners.
Mr. C.R. Sonawane, A.G.P., for the Respondent.

...

CORAM : A.M.KHANWILKAR,J.

29th June 2004

P.C.:

. Issue notice. Mr. Sonawane, A.G.P., waives notice for the Respondent. Two weeks' time is granted for filing reply and one week thereafter for filing rejoinder affidavit, if any.

. Mr. Anturkar states on instructions that the Petitioners are carrying on the mining

activity on the suit property. Mr. Sonawane submits that it is impermissible for the Petitioner to carry on such activity in absence of any valid licence in favour of the Petitioners and which has not been renewed so far. Mr. Anturkar, however, submits that the Petitioners are carrying on mining activity on the assumption that mining licence is deemed to be renewed after the statutory period is over. Without expressing any opinion on the correctness of the submission, the Petitioners may proceed to carry on their activities at their own risk, cost and consequences and if permissible by law.

. Petition be placed under the caption "After Notice" in the week commencing from 19th July 2004.

. All concerned to act on the copy of this order duly authenticated by the Court Stenographer of this Court.

(A.M.KHANWILKAR,J.)

IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5300 OF 2004

P. Narayan and others ... Petitioners

versus

Municipal Corporation of City of Pune and another ... Respondents

...

Mr. A.V. Anturkar, for the Petitioners.

Mr. R.M. Pethe for Mr. R.G. Ketkar, for the Respondent No. 1.

...

CORAM : A.M.KHANWILKAR,J.

29th June 2004

P.C.:

. Heard Counsel appearing for the parties. I see no reason to interfere with the impugned order passed by the Court below in application under section 9A(2) of the Code.

. At this stage, Mr. Anturkar submits that although several arguable questions are raised, the Petitioner has already deposited sum of Rs.3

lakhs with the Corporation and is ready and willing to deposit further balance amount within four weeks from today, but seeks favour that the appellate authority be directed to decide the appeal as expeditiously as possible. There can be no difficulty in accepting this request of expediting the hearing of the appeal filed under section 406 of the B.P.M.C. Act if the Petitioners were to deposit the entire outstanding amount as demanded within four weeks from today. On such deposit being made by the Petitioners with the Corporation, the Petitioners to apply to the appellate authority for expediting the hearing of the appeal and if such application is made, the appellate Court will be well-advised to finally decide the said appeal as expeditiously as possible, preferably within six weeks from the date of the application.

. Status quo as of today be maintained for a period of four weeks to enable the Petitioners to deposit the balance outstanding amount as referred to above as per the assurance given to this Court. Petition disposed of on the above terms.

. All concerned to act on the copy of this

order duly authenticated by the Court Stenographer of this Court.

IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5319 OF 2004

Yashwant Barkya Bhoir ... Petitioner

versus

City & Industrial Development Corporation of Maharashtra and others ... Respondents

...

Mr. Rajesh S. Datar, for the Petitioner.

Mr. S.J. Ghogare, for Respondent No. 3.

...

CORAM : A.M.KHANWILKAR,J.

29th June 2004

P.C.:

. Issue notice for final disposal, returnable four weeks. Mr. Ghogare waives notice for Respondent No. 3. Petitioner to serve the remaining Respondents either personally or by speed post/courier/e-mail/fax and file affidavit of service on or before the returnable

date failing which the petition to stand dismissed for non-prosecution without further reference to the Court.

. Status quo as of today be maintained by the parties till further orders.

. It is made clear that it will be open to Respondent No. 1 CIDCO to decide the regularisation application preferred by the Petitioner within four weeks from today, so that the entire controversy can be put at rest.

. All concerned to act on the copy of this order duly authenticated by the Court Stenographer of this Court.

(A.M.KHANWILKAR,J.)

IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1411 OF 2004

WITH

CIVIL APPLICATION NO. 1471 OF 2004

IN

WRIT PETITION NO. 3475 OF 2004

M/s. Rathi Re-Rolling Mills & anr.... Petitioners

versus

Central Bank of India and others ... Respondents

...

Mr. R.S. Apte, with Mr. U.B. Nighot, for the Petitioners.

Mr. H.N. Thakore i/by Thakore Jariwala & Associates, for the Respondents.

...

CORAM : A.M.KHANWILKAR,J.

29th June 2004

P.C.:

. While entertaining the writ petition filed by the Petitioners against the order dated 2nd April 2004 and 19th June 2002, this Court passed conditional order on 17th May 2004, which

reads thus :

> "1. Heard the learned counsel for the petitioners and Shri Thakore for the respondents.
>
> 2. The learned counsel states that a proposal for one time settlement has been given by the petitioners to the Respondent No. 1 Bank to settle the entire dues in the sum of Rs.3,48,00,000/-. The learned counsel for the petitioner invited my attention to clause no. iii on page 80 of the petition (of the R.B.I. Scheme) which states that the amount of one time settlement should be preferably paid in one lumpsum but in cases where the borrowers are unable to pay the entire amount, atleast 25% of the settlement amount shall be paid upfront and balance 75% should be recovered in instalments within a period of one year together with interest at PLR.
>
> According to the learned counsel, 25% of

3.48 crores comes to Rs.87 lakhs approximately. In view of this, ad-interim stay in terms of prayer clause (d) subject to the petitioners depositing with the respondent Bank a sum of Rs.87 lakhs in the bank or with the DRT within a period of six weeks. In the event the amount is not deposited within a period of six weeks, stay shall stand vacated automatically without further reference to the Court.

In the event the amount is deposited in the DRT, the respondent Bank shall have liberty to withdraw the same.

All concerned to act on a copy of this order duly authenticate(d) by the Sheristedar."

. The Petitioners were unable to comply with the conditions stated in the aforesaid order. It is in that backdrop Civil Application No. 1411 of 2004 has been filed for directing the Respondent No. 1 to accept proposal amount of Rs.3.48 crores as given by the Petitioners in

their letter dated 3rd February 2004 by way of one time settlement and further to disclose the exact amount of settlement as per the recent R.B.I. guidelines for settlement of chronic N.P.As. (non-performing accounts) and allow the Petitioners to conduct inspection of the accounts of the Respondent No. 1 Bank through Chartered Accountant or any other competent person and for further relief that the Respondent No. 1 be directed to give its consent for the purchasers of machinery, moveables, etc., to remove the same from the factory premises, to whom it was agreed to be sold for Rs.20 lakhs by directing the D.R.T. Mumbai to accept the three demand drafts of total Rs. 20 lakhs which are deposited with the Petitioners.

. Another application has been filed, being Civil Application No. 1471 of 2004 for the relief that the Petitioners be granted time to deposit balance amount of Rs.67 lakhs out of Rs.87 lakhs.

. This Order would dispose of both the aforesaid Civil Applications.

. Insofar as the prayer to issue direction to the Bank to disclose the amount of settlement and give inspection of the accounts is concerned, that prayer is not seriously resisted on behalf of the Bank. In fact, Counsel for the Bank has drawn my attention to the statement made in the reply affidavit that the Bank has offered to furnish necessary information as also provided inspection of the accounts to the Petitioners. It is also stated that the statement relating to one time settlement is also prepared. In that sense, this prayer does not survive for consideration in view of the assurance given on behalf of the Respondent Bank that if the Petitioners demand inspection, the same will be afforded to the Petitioners as may be permissible by law. It is stated that the Petitioners have not availed of inspection so far. In any case, if inspection is demanded by the Petitioners, the same shall be offered to the Petitioners as may be permissible by law.

. The next question which is required to be considered is whether the Petitioners are justified in reckoning the amount of Rs.20 lakhs received by way of sale of moveable properties

and seek adjustment thereof in relation to the requirement of deposit of sum of Rs.87 lakhs as directed by this Court on 17th May 2004. I have no hesitation in taking the view that the obligation of the Petitioners is to pay sum of Rs.87 lakhs independent of the sale transaction of moveable properties of the company. In other words, the amount of Rs. 20 lakhs received by way of sale of the moveable properties of the company cannot be reckoned or given adjustment towards the requirement to deposit Rs. 87 lakhs.

. The next submission that remains to be considered is for extending time to deposit the amount. This Court granted time to deposit sum of Rs.87 lakhs within six weeks from 17th May 2004, which period has expired yesterday. After hearing Counsel for the parties, by way of indulgence and as last opportunity, the Petitioners are granted time of six weeks from today as is sought by the Counsel appearing for the Petitioners. It is made clear that no further extension will be given on any ground whatsoever and, if, inspite of this extension, the Petitioners fail to deposit sum of Rs.87 lakhs within six weeks from today, as was

required to be deposited under order dated 17th May 2004, the petition itself shall stand dismissed for non-prosecution without further reference to the Court. This is so because the extension, which is sought on behalf of the Petitioners, is being granted by way of indulgence and as last opportunity, as the total outstanding dues which the Petitioners have admitted is to the extent of Rs.3.48 crores, as stated in the order dated 17th May 2004.

. It is brought to my notice that because of the interim stay granted by this Court, further proceedings before the Tribunal are stayed and on account of which, even though the purchaser of moveable properties has deposited the entire amount of Rs. 20 lakhs, confirmation of sale has not been done so far, on account of which the said properties though sold are not made over to the purchaser. The appropriate course in the fact situation of the present case is to lift the stay granted by this Court for the limited purpose of enabling the Tribunal to examine the issue of confirmation of sale of moveable properties of the company. No more and no less.

. Both the applications are accordingly disposed of in terms of the directions passed above.

. The Tribunal/Recovery Officer to conclude the proceedings of confirmation of sale as expeditiously as possible preferably within six weeks from today.

. I hope and trust that within the extended period, the parties will amicably resolve all the disputes and finalise the one time settlement amount in terms of the guidelines issued by the R.B.I.

. All concerned to act on the copy of this order duly authenticated by the Court Stenographer of this Court.

(A.M.KHANWILKAR,J.)

IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4986 OF 2004

Ratnakar S. Shetty ... Petitioner

versus

The Commissioner of Police,
Mumbai and another ... Respondents

...

Mrs. V.B. Thadhani, for the Petitioner.

Mr. P.I. Khemani, A.G.P., for the Respondents.

...

CORAM : A.M.KHANWILKAR,J.

29th June 2004.

P.C.:

. Issue notice for final disposal, returnable in the week commencing from 19th July 2004. Mr. Khemani, A.G.P., waives notice for the Respondents.

. Ad interim relief to continue till further orders.

. All concerned to act on the copy of this

order duly authenticated by the Court Stenographer of this Court.

(A.M.KHANWILKAR,J.)

IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5136 OF 2004

Tatyasaheb Lalasaheb Jadhav ... Petitioner

versus

Trimurti Nagri Sahakari Pat

Sanstha and others ... Respondents

...

Mr. S.S. Shah, for the Petitioner.

...

CORAM : A.M.KHANWILKAR,J.

29th June 2004

P.C.:

. Additional affidavit is filed on behalf of the Petitioner in terms of the liberty granted on 23rd June 2003 stating that the Petitioner is not liable to pay any amount to the society, except loan transaction of Rs.10,000/- out of which he has already repaid Rs.6,000/- to the Society.

. Issue notice for final disposal returnable six weeks. Petitioner undertakes to

serve the Respondents either personally or by speed post/courier/e-mail/fax and file affidavit of service on or before the returnable date failing which the petition to stand dismissed for non-prosecution without further reference to the Court.

. Status quo as of today till further orders.

. All concerned to act on the copy of this order duly authenticated by the Court Stenographer of this Court.

(A.M.KHANWILKAR,J.)

IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5443 OF 2004

Purushottamlal Kariwala & ors. ... Petitioners

versus

Recovery Officer, DRT II,

Mumbai and others ... Respondents

...

Mr. A.K. Abhyankar with Mr. M.B. Malkan, for the Petitioners.

Mr. Sunil Mishra for Respondent No. 2.

Mr. Haresh Jagtiani, Senior Counsel with Mr. Anil D'Souza and Mr. Mihir Rele, for Respondent No. 3.

...

CORAM : A.M.KHANWILKAR,J.

29th June 2004

P.C.:

. Preliminary objection has been raised on behalf of the Respondents that the order which is impugned in this petition is amenable to appeal under section 30 of the Act and for which reason, this Court should decline to entertain the

present writ petition. In response to this objection, Mr. Abhyankar contends that the order as has been passed, which is impugned in this petition, is on an application for extension of time, which is outside the purview of the authority of the Recovery Officer as provided for in sections 25 to28 of the Act, for which reason the order so passed is not amenable to appeal under section 30 of the Act, because that provision expressly provides that the Tribunal may confirm, modify or set aside the order made by the Recovery Officer in exercise of powers under sections 25 to 28 (both inclusive).

. On examining the rival submissions, I have no hesitation in negating the preliminary objection raised on behalf of the Respondents that the order impugned in this petition is appealable under section 30 of the Act. I accept the argument of Mr. Abhyankar that the impugned order is not ascribable to the powers exercised by the Recovery Officer to any of the provisions of sections 25 to 28 of the Act (both inclusive). If it is so, no appeal would lie against that order and it is open to the Petitioners to challenge the same before this Court by way of

present writ petition. In the circumstances, the petition will have to proceed on merits.

. Heard Counsel appearing for the parties. Rule. Rule made returnable forthwith by consent. Mr. Abhyankar submits that the Recovery Officer is a formal party. In the circumstances, notice to Respondent No. 1 is dispensed with. Mr. Mishra waives notice for Respondent No. 2 and Mr. Mihir Rele waives notice for Respondent No. 3. As short question is involved, petition is taken up for final disposal forthwith by consent.

. The main grievance in this petition at the instance of the defendants is that the purchaser having failed to deposit the amount within the stipulated time, only two options were permissible, namely, the amount already deposited by the purchaser was required to be forfeited and the Recovery Officer was obliged to proceed with fresh proclamation and initiate fresh process for sale. In support of this submission, reliance is placed on several decisions, including A.I.R. 1954 S.C. 349 in the case of Manilal Mohanlal Shah and others v. Sardar Sayed Ahmed Sayed Mahmad and another. It is also brought to my

notice that the purchaser being aggrieved by the order, which is impugned in this petition, has independently challenged the same before the Tribunal by way of appeal. I have already taken the view that the order which is impugned in this petition is not ascribable to exercise of powers under sections 25 to 28 of the Act (both inclusive) by the Recovery Officer. If it is so, no appeal would lie against the same. It is seen that the Petitioners before this Court have conceded before the Recovery Officer while examining the application for extension of time preferred by the purchaser that they have no objection for refund of the earnest money deposited by the purchaser, but their only objection was to granting extension of time to the auction purchaser for making payment with penalty or otherwise. This contention can be discerned from the observations in para 5 of the impugned order.

. After hearing Counsel appearing for the parties, to my mind, interest of justice would be met by setting aside the impugned order and directing the Recovery Officer to commence fresh process of proclamation and sale of the disputed

property. The Counsel appearing for the purchaser - Respondent No. 3 - has fairly accepted on behalf of Respondent No. 3 on instructions that the Respondent No. 3 would bear the expenses of such proclamation so that the Respondent No. 2 Bank is not unnecessarily burdened with the said expenditure.

. Insofar as the refund of the amount of earnest money already deposited by Respondent No. 3 is concerned, as the Petitioners have no objection for refund of that amount, and the Respondent No. 2 Bank has taken a neutral stand except contending that the amount ought to be forfeited, to my mind, having regard to the serious grievance by the auction purchaser of non-disclosure of relevant facts it would surely require that the amount need not be forfeited in the fact situation of the present case, but refunded to the auction purchaser. Such an order would subserve the ends of justice and also set at rest the entire controversy between the parties and further the process of the sale of the disputed properties is expedited.

. In the circumstances, this petition

succeeds. The impugned judgment and order is set aside. For the reasons already recorded above, the earnest money deposited by Respondent No. 3 be made over to Respondent No. 3 after deducting the expenditure involved in the process of fresh proclamation and sale of the disputed properties. The fresh process be initiated by the Recovery Officer as directed above and be concluded as expeditiously as possible, preferably within two months from today. It is made clear that the Recovery Officer shall ensure that all relevant facts are disclosed in the fresh proclamation to obviate any such grievance in future.

. Petition allowed on the above terms. Rule made absolute. No order as to costs.

. At this stage, Counsel for Respondent No.2 Bank submits that it may be clarified that any observations made in this decision should not influence the proceedings pending between the parties in any other Court, or, for that matter, in the proceedings before the Recovery Officer. This submission is accepted.

. All concerned to act on the copy of this

order duly authenticated by the Court Stenographer of this Court.

(A.M.KHANWILKAR,J.)

IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3105 OF 2004

Atur Apartments Co-operative
Housing Society Limited ... Petitioner

versus

Mahesh Gul Gopwani and others ... Respondents

...

Mr. P.S. Dani, for the Petitioner.

Mr. N.V. Walawalkar with Mr. P.M. Gaonkar, for Respondent No.1.

...

CORAM : A.M.KHANWILKAR,J.

29th June 2004

P.C.:

. Counsel appearing for the parties submit that the parties have agreed to invite order of this Court in terms of the Minutes of Order duly signed by the Advocates and their respective parties. In addition, affidavit of undertaking is also filed.

. Petition disposed of in terms of the

Minutes of Order. Undertaking as given on behalf of Respondent No. 1 is accepted. Statement made on behalf of society is also accepted.

. Office while issuing certified copy of the present order will also issue copy of the Minutes of Order accompanying the certified copy.

. All concerned to act on the copy of this order duly authenticated by the Court Stenographer of this Court.

(A.M.KHANWILKAR,J.)

IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION (ST.) NO. 18208 OF 2004

WITH

WRIT PETITION (ST.) NO. 18092 OF 2004

WITH

WRIT PETITION NO. 5416 OF 2004

Nathulalji Charitable Trust,
etc., etc. ... Petitioners

versus

Shri Sitaram Dharma Bond and
others, etc., etc. ... Respondents

...

Mr. S.G. Karandikar, for the Petitioners.

Mr. V.A. Thorat, Senior Counsel, with Mr. P.N. Patil, for Respondents Nos. 1 and 2.

Mr. K.S. Dewal, for Respondent No. 3.

...

CORAM : A.M.KHANWILKAR,J.

29th June 2004

P.C.:

. Leave to amend to place on record reasoned judgment of the authority below is

granted. Amendment to be carried out by Friday. Post these matters on 5th July 2004 in Fresh Admission category. Status quo to continue till the matters are heard for admission in the week commencing from 5th July 2004.

. Civil Application St. No. 18208 of 2004 tendered across the Bar for amendment. Taken on Board. By consent, application allowed in terms of prayer clause (a). Application be presented in the Registry in the course of the day.

(A.M.KHANWILKAR,J.)

IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5324 OF 2004

Shrimati Pandurang Haibati Padwal
Vividh Karyakari Seva Society,
Sangshi, Tal. Gaganbawda, District
Kolhapur. ... Petitioner

versus

State of Maharashtra and ors. ... Respondents

...

Dr. V.K. Choudhary, for the Petitioner.

...

CORAM : A.M.KHANWILKAR,J.

29th June 2004

P.C.:

. Issue notice before admission returnable four weeks.

. Status quo as of today be maintained till further orders.

. All concerned to act on the copy of this order duly authenticated by the Court

Stenographer of this Court.

IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5320 OF 2004

Ulhas J. Goraksha and ors. ... Petitioners

versus

Smt.Leela Madhav Pendse and ors.... Respondents

and

Jayant Ganpat Chogle and anr. ... Opponents

...

Mr. V.T. Lulia, for the Petitioners.

Mr. V.W. Apte, for Respondents Nos. 5 to 9, 11, 12 and 14.

...

CORAM : A.M.KHANWILKAR,J.

29th June 2004

P.C.:

. Heard Counsel appearing for the parties. Rule. Rule made returnable forthwithby consent. Mr. Apte waives notice for Respondents Nos. 5 to 9, 11, 12 and 14, original Defendants.

Counsel appearing for the Defendants and Respondents submit that notice to other Respondents can be dispensed with, as they were not opposing the proposed amendment. Accordingly, notice to remaining Respondents is dispensed with.

. As short question is involved, petition is taken up for final disposal forthwith by consent.

. After having perused the pleadings and considering the arguments, I have no hesitation in taking the view that the Chamber Summons as filed by the Petitioners ought to have been allowed in its entirety and not confined only to the relief of adding opponents - Respondents Nos. 1 and 2 - as party Defendants to the suit. It was necessary to permit the Plaintiffs to carry out consequential amendments in the pleadings by incorporating necessary averments while impleading opponents, Respondents Nos. 1 and 2, as party Defendants. Counsel appearing for the said opponents, Respondents Nos. 1 and 2 before the trial Court, as well as the contesting Respondents herein, fairly submit that such a

course would have been appropriate and would have subserved the interest of justice. They further submit that instead of keeping the matter pending for detailed hearing in this Court, the order which is impugned in this petition be modified by allowing the Chamber Summons in its entirety in terms of prayer clause (a), which reads thus :

> "that this Hon'ble Court will be pleased to allow the plaintiffs Nos. 2 to 7 to delete the name of the plaintiff No.1 in thesuit and join the respondents nos. 1 and 2 as Defendants Nos. 17 and 18 and also allow them to amend the plaint according to schedule annexed hereto and also carry out consequential amendments to the plaint;"

. Accordingly, this petition is allowed on the above terms. Amendments be carried out within two weeks from today.

. At this stage, Counsel appearing for the contesting Respondents submits that the Petitioners have agreed before the trial Court to implead two more defendants. Counsel for the

Petitioners submits that necessary steps in that behalf will be taken before the trial Court. This assurance is accepted. Petition disposed of on the above terms.

. It will be open to the parties to apply to the trial Court for expediting hearing of the suit after the formality of amendment is completed. That application will be considered by the trial Court on its own merits in accordance with law. Ordered accordingly.

. All concerned to act on the copy of this order duly authenticated by the Court Stenographer of this Court.

(A.M.KHANWILKAR,J.)

IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5262 OF 2004

Bhairavnath Mahila Sahakari
Dudh Vyavasayik Sanstha Maryadit ... Petitioner

versus

The Assistant Registrar, Co.op.
Societies and others ... Respondents

...

Mr. R.S. Datar, for the Petitioner.

Mr. A.H. Palekar, A.G.P., for Respondents Nos. 1, 2 and 3.

Mr. P.D. Dalvi, for Respondent No. 4.

...

CORAM : A.M.KHANWILKAR,J.

29th June 2004

P.C.:

. Heard Counsel appearing for the parties. Rule. Rule made returnable forthwith by consent. Mr. Palekar, A.G.P., waives notice for Respondents Nos. 1, 2 and 3. Mr. Dalvi waives notice for Respondent No. 4. It is agreed that the contesting Respondent is Respondent No. 4,

who has filed the revision. Hence, notice to Respondents Nos. 5 to 10 is dispensed with.

. As short question is involved in this petition, petition taken up for final disposal forthwith by consent.

. The order questioned in this petition is granting stay to the operation of the order passed by the first authority permitting registration of the Petitioner Society. After hearing counsel for the parties and going through the record, it is seen that there is nothing on record to even remotely suggest that the Petitioner Society has already been registered pursuant to the order passed by the first authority. If it is so, there is no question of staying that order. The appropriate course, to my mind, in the fact situation of the present case, is to direct the revisional authority to decide the revision application pending before him as expeditiously as possible preferably within six weeks from today. All questions to be raised by the rival parties in the said revision to be decided on its own merits, without being influenced by the order which is impugned in this

petition or the present order.

. Petition disposed of in the above terms with no order as to costs.

. All concerned to act on the copy of this order duly authenticated by the Court Stenographer of this Court.

(A.M.KHANWILKAR,J.)